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*Attorneys for RD Management LLC*

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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	:	
In re:	:	Chapter 11
	:	
SEARS HOLDINGS CORPORATION, <i>et al.</i> ,	:	Case No. 18-23538 (RDD)
	:	
Debtors. <sup>1</sup>	:	(Jointly Administered)
	:	
-----X	:	

**RD MANAGEMENT LLC'S REVISED  
OBJECTION TO NOTICE OF CURE AMOUNT**

RD Management LLC, as agent for FB Billerica Realty Investors LLC and Fitchburg MFB, LLC ("RD Management"), by and through its undersigned attorneys, hereby files this

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<sup>1</sup> The debtors in these chapter 11 cases, along with the last four digits of each debtor's federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); SHC Licensed Business LLC (3718); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); Sears, Roebuck de Puerto Rico, Inc. (3626); SYW Relay LLC (1870); Wally Labs LLC (None); SHC Promotions LLC (9626); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); Sears Brands Management Corporation (5365); and SRe Holding Corporation (4816).

objection (the “Assignment Objection”) to the *Notice of Assumption and Assignment of Additional Designatable Leases* dated April 19, 2019 [Dkt. No. 3298]. The Assignment Objection revises the first and second *Objection to Notice of Cure Amount* [Dkt. Nos. 1817, 2222] filed by RD Management on January 25 and 31, 2019, respectively, which are incorporated herein by reference. In support thereof, RD Management states as follows:

### **OBJECTION**

1. On October 15, 2018 (the “Petition Date”), Sears Holdings Corporation and certain of its affiliates (collectively, the “Debtors”) filed their respective voluntary petitions for reorganization pursuant to Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”).

2. On January 18, 2019, the Debtors filed the *Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with the Global Sale Transaction* [Dkt. No. 1731], setting forth, *inter alia*, the non-residential real property leases subject to potential assumption and assignment, including that certain unexpired lease (the “Billerica Lease”) between FB Billerica Realty Investors LLC, as lessor, and Kmart Corporation (the “Kmart”), as tenant, for the premises currently known as Store Number 3288 located at 484 Boston Road, Billerica, MA 01821.

3. On January 23, 2019, the Debtors filed the *Supplemental Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Global Sale Transaction* [Dkt. No. 1774], setting forth, *inter alia*, additional non-residential real property leases subject to potential assumption and assignment, including that certain unexpired lease (the “Fitchburg Lease”) between Fitchburg MFB, LLC, as lessor, and

Kmart, as tenant, for the premises currently known as Store Number 4444 located at 140 Whalon Street, Fitchburg, MA 01420.

4. On January 25, 2019, RD Management filed its first *Notice of Objection to Cure Amount* [Dkt. No. 1817], asserting the cure amount for the Billerica Lease to be \$233,214.99.

5. On January 31, 2019, RD Management filed its second *Notice of Objection to Cure Amount* [Dkt. No. 2222], asserting the cure amount for the Fitchburg Lease to be \$16,418.13.

6. On February 8, 2019, the Court entered the *Order (I) Approving the Asset Purchase Agreement Among Sellers and Buyer, (II) Authorizing the Sale of Certain of the Debtors' Assets Free and Clear of Liens, Claims, Interests and Encumbrances, (III) Authorizing the Assumption and Assignment of Certain Executory Contracts, and Leases in Connection Therewith, and (IV) Granting Related Relief* [Dkt. No. 2507].

7. On April 2, 2019, the Court entered the *Order (I) Authorizing Assumption and Assignment of Certain Executory Contracts and Leases and (II) Granting Related* [Dkt. No. 3008].

8. On April 19, 2019, Transform Holdco LLC (the “Buyer”) filed the *Notice of Assumption and Assignment of Additional Designatable Leases* [Dkt. No. 3298] (the “Notice of Assumption”), which identifies the Fitchburg Lease and Billerica Lease each with a “revised” cure amount of \$0.00. *See* Notice of Assumption at pp. 8, 9.

### **OBJECTION**

9. As a condition to the assumption and assignment of the leases, the Debtors are required to cure existing defaults pursuant to section 365 of the Bankruptcy Code, which provides in relevant part that “[i]f there has been a default in the executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee . . . cures, or provides adequate assurance that the trustee will

promptly cure, such default . . . .” 11 U.S.C. § 365(b)(1)(A).

10. Since filing the first and second *Notice of Objection to Cure Amount*, counsel for RD Management contacted counsel for the Debtors and the Buyer to provide additional documentation and discuss the disputed cure amounts; however, counsel for RD Management has not received a meaningful response. Based on further reconciliation of RD Management’s books and records, RD Management has determined that the cure amount for the Fitchburg Lease is \$7,066.45. Annexed as Exhibit A is an itemization of such amount through the date hereof. RD Management has further determined the proper cure amount for Billerica Lease is \$194,772.73. Annexed as Exhibit B is an itemization of such amount through the date hereof.

#### **RESERVATION OF RIGHTS**

11. RD Management reserves the right to amend this revised objection to (i) account for all further amounts that have not yet been billed or have not yet become due under the terms of the Billerica Lease or Fitchburg Lease, and (ii) further reconcile the proposed cure amounts set forth herein for items such as, but not limited to, claims for rent, taxes, fees and any additional cure amounts due in connection with therewith.

*[concluded on the following page]*

**CONCLUSION**

WHEREFORE, RD Management respectfully requests that the Court enter an order

(i) establishing that the cure amount for the Billerica Lease (Store Number 3288) is \$ 194,772.73;

(ii) establishing that the cure amount for the Fitchburg Lease (Store Number 4444) is \$7,066.45;

and (iii) granting such other and further relief as is just and proper under the circumstances.

Dated: New York, New York  
April 30, 2019

**THOMPSON & KNIGHT LLP**

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**CERTIFICATE OF SERVICE**

Michael V. Blumenthal certifies that he caused to be served a true and correct copy of the attached **RD Management LLC's Revised Objection to Notice of Cure Amount (Stores No. 3288 & 4444)** via transmission of Notice of Electronic Filing generated by CM/ECF on all parties of record, and on parties listed below as indicated.

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